

MITCHEL MERCIER)	
Claimant)	
)	
VS.)	
)	
BRADLEY REAL ESTATES, INC.)	
Respondent)	Docket No. 258,302
)	
AND)	
)	
RELIANCE NATIONAL INS. CO.)	
Insurance Carrier)	

Respondent contends the ALJ's preliminary hearing Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

In August 1999, claimant was directed to strip a concrete floor with a product identified as Square One. This product contains sodium hydroxide and 2-butoxyethanol. During this process claimant spilled the product on his lower legs, exposing him to the above-listed chemicals for a period of two hours. The next day claimant sought medical treatment and was found to have chemical burns on both legs along with swelling in the left leg. He was treated with antibiotics, but the swelling in his left lower extremity continued. In September 1999, within approximately one week of his exposure, claimant was diagnosed with deep vein thrombosis of the left lower extremity and prescribed Coumadin.

In July 2000, claimant was experiencing abdominal pain and ongoing lower extremity swelling. An ultrasound revealed ascites, heterogeneous liver and splenomegaly. Ascites is intra-abdominal fluid which causes abdominal pain. Heterogeneous liver is an abdominal condition of the liver revealed by ultrasound wherein one parts of liver appears different from another, indicating excess congestion and blood in different part of the liver. Splenomegaly is the enlargement of the spleen caused from blood being backed up into the spleen. Tests performed at this time indicated elevated liver function, but a hepatitis series was obtained and was negative. Claimant was advised to undergo a liver biopsy, but did not at that time.

In October 2000, further testing revealed massive ascites. In November 2000, claimant had an upper gastrointestinal hemorrhage. A liver biopsy showed extensive necrosis of centrilobular hepatocytes and an accumulation of blood consistent with hepatic venous outflow obstruction. At this point, claimant was diagnosed with Budd-Chiari Syndrome, a condition where blood clots plug up the hepatic veins which drain the liver. As a result, the claimant's liver began to fail and he has been told that he will ultimately need a liver transplant. In order to delay what is apparently inevitable, claimant had a Transjugular Intrahepatic Portosystemic Shunt (TIPS) procedure done to decompress the liver and inhibit clots from forming.

Following the assertion of a workers compensation claim arising out of his chemical exposure, a preliminary hearing was held on April 13, 2004. At that time the parties appeared and a conference was held with the ALJ. Although no formal transcript was taken, it appears from the parties' briefs that both claimant and respondent had written medical opinions relating to the causation of claimant's liver disease. Claimant offered the opinion of Dr. Jameson Forster, who attributed the claimant's Budd-Chiari Syndrome to his occupational exposure to chemicals in August 1999, while respondent offered the opinion of Dr. Allen Parmet who disputed that claimant's occupational exposure was the cause of his present diagnosis.

When presented with this evidence, the ALJ appointed Dr. Mark Uhl to perform an independent medical examination pursuant to K.S.A. 44-516. Dr. Uhl is a gastroenterologist and devotes approximately 15 percent of his practice to those with liver disease. While he has treated as many as 15 patients with Budd-Chiari Syndrome, it is a very uncommon liver disease and he has never encountered a case where Budd-Chiari Syndrome was caused by chemical exposure.¹

Following an examination in June 2004, Dr. Uhl authored a report dated July 25, 2004. In both his report and during his deposition, Dr. Uhl indicated claimant is suffering from a hypercoagulable state that had given rise to Budd-Chiari Syndrome. Simply put, when the drainage of one's liver is blocked, here by virtue of claimant's hypercoagulated blood, the blood will back up into the liver causing it to swell and impair its ability to function. The TIPS procedure can re-route the blood through a shunt and will "buy the patient some time," but a liver transplant will eventually become necessary.² In fact, claimant is presently on the list for a liver transplant.

Dr. Uhl performed computerized medical research on Medline, the national data bank for medical research. Dr. Uhl found no connection in any of the medical literature between cutaneous exposure to 2-butoxyethanol and sodium hydroxide and Budd-Chiari Syndrome. Thus, based upon his independent research and his own professional experience, Dr. Uhl expressed the belief that claimant developed a hypercoagulable state, but does not know what caused claimant's hypercoagulable state.³ Dr. Uhl agrees that it is possible that chemicals might have affected the claimant's protein levels such that they caused claimant to develop his hypercoagulable state.⁴ However, he went on to opine that it was his understanding that "people can have a hypercoagulable state without any predisposing event that caused a hypercoagulable state. A lot of people I think probably have a hypercoagulable state and have not yet had their clot."⁵

After reviewing Dr. Uhl's IME report as well as comments of counsel, the ALJ concluded claimant had failed to meet his burden of proving his end-stage liver disease is causally related to his occupational chemical exposure. Claimant timely appealed and the parties agree that the Board has jurisdiction to hear this matter.

¹ Uhl Depo. at 28 and 31-32.

² *Id.* at 20.

³ *Id.* at 22.

⁴ *Id.* at 25.

⁵ *Id.* at 26.

At the outset, the respondent suggests the only evidence properly before the ALJ on the issue of causation was contained within the report and deposition testimony of Dr. Uhl. Respondent seems to maintain that the reports offered by both parties at the original preliminary hearing on April 13, 2004 should not be considered.⁶ The Board disagrees.

Workers Compensation proceedings are not controlled by strict rules of evidence. Evidence is more liberally admitted in Workers Compensation proceedings.⁷ The Board has held that the Legislature did not intend to bind the administrative law judges by technical rules of procedure, but rather desired expeditious and impartial hearings.⁸ This is particularly true at the preliminary hearing stage. The ultimate goal is to efficiently process a worker's claim.

Here, while it is not entirely clear the ALJ reviewed the reports offered by the parties at or after the initial meeting in April 2004, it would not be in error to do so. The other two reports offered at the initial meeting of the parties formed the basis upon which the ALJ concluded an IME was necessary. Thus, the Board finds that if the ALJ reviewed the reports of Drs. Parmet and Forster in connection with his decision in this matter, that practice was acceptable at the preliminary hearing level. The report requested from Dr. Uhl was prepared pursuant to K.S.A. 44-516 and comes into evidence without any further foundation.

The Board has reviewed the reports of both parties' physicians as well as that offered by Dr. Uhl in response to the ALJ's request and finds the ALJ's preliminary hearing Order should be affirmed. At this juncture of the proceedings it appears that the greater weight of the evidence suggests there is no causal link between claimant's occupational chemical exposure and his end-stage liver disease. There is certainly a temporal relationship between claimant's chemical exposure and the onset of his physical symptoms. However, that alone does not compel a finding that claimant's liver disease was caused by his chemical exposure. Absent further evidence, the Board concurs with the ALJ's conclusion that claimant failed to satisfy his burden of proving his end-stage liver disease was caused by his chemical exposure in the workplace.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.⁹

⁶ These reports were generated by Dr. Jameson Forster and Dr. Allen Parmet.

⁷ *Box v. Cessna Aircraft Co.*, 236 Kan. 237, 689 P.2d 871 (1984).

⁸ *Hayes v. Raytheon Aircraft Company*, Nos. 230,784 and 230,785, 1998 WL 304301 (Kan. WCAB May 7, 1998).

⁹ K.S.A. 44-534a(a)(2).

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bruce E. Moore dated September 24, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of November 2004.

BOARD MEMBER

c: Jeffrey E. King, Attorney for Claimant
Douglas C. Hobbs, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director